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Supreme Court of Louisiana.

No. 10,774.

THE GRAND LODGE OF LOUISIANA, F. AND A. MASONS,

versus

THE CITY OF NEW ORLEANS, APPELLANT.

ON APPLICATION FOR REHEARING.

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The very careful study by the Court of the questions involved in this case, and the manifest regret it felt in deciding against the plaintiff, which it very properly characterizes as a meritorious association, has caused counsel to hesitate long, and to almost doubt the right or propriety of intruding upon the Court with a request for a rehearing. A very careful study of the case, however, confirms the counsel in the opinion that the Court has overlooked some of the important facts of the case, and has stated the adverse rule of law too strongly, as set out in our application, and therefore, a re-examination of the facts and the law is respectfully solicited.

The grounds for a rehearing are as follows:

First. That the Court erred in holding that the fact that the exemption granted to petitioner was not in its original charter, but was by subsequent act of the legislature, did not give rise to a contract protected by the constitution of the United States:

Second. That the Court erred in holding that there was no

such consideration for the exemption as prevented its subsequent repeal without the impairment of a contract.

Third. That the Court erred in holding that article 207 of the constitution of 1879 repealed the exemption granted to petitioner, for even if it were competent for the constitutional convention to have repealed the exemption, it did not do so in words or by necessary implication; that as general laws do not repeal special laws, a repeal could not be implied: the act under which exemption is claimed being special, could only be repealed by express legislation intended to have that effect.

Fourth. That the Court erred in holding that the language of the constitution of 1879, in regard to property exempt from taxation, was different in law from the language in the constitution of 1868, inasmuch as the jurisprudence of this Court, and of the Courts organized under the constitution of 1868, has added to the exemption clause in that constitution the proviso contained in article 207 of the constitution of 1879.

Fifth. That the Court erred in giving any greater effect to the constitution than would be given to a statute, and in giving a retroactive effect to the constitution of 1879, which its framers never intended it should have, and which, by other articles therein than article 207, show the intention to be not to destroy corporate rights, privileges or immunities then existing.

Sixth. That the Court erred in basing its conclusions upon the case of Christ Church vs. Philadelphia, 24 Howard, 300, for the reason that the same is contrary to later adjudications of this Court, and for the further reason that same has not been quoted or followed by the Supreme Court of the United States, or referred to by it since its rendition as authority for the point therein decided, even if the issues were the same, which is not the case, because there was a special repeal of the classes of exemption set up by the plaintiff, enacted by the Pennsylvania legislature.

I.

The Court concludes its careful and exhaustive treatment of the case in the following terms :

"We very much regret that we have been constrained to subject to taxation, the property of the plaintiff's meritorious association, but we have been unable, after careful research, to find any authority in our own decisions or those of the Supreme Court [of the United States], which holds that a bare statutory exemption *not* contained in the legislative charter of a private corporation, nor in an amendment thereto, and not expressly defined to be a contract between the State and the corporation, is irrepealable and not subject to recall at the option of the legislature.

"We find the authorities are unanimous to the contrary."

There is no question that the exemption from taxation, by the State, to form a protected contract, must be explicit and not doubtful in its terms, and accompanied with any existing legislation at the time of the right of repeal, either in the constitution of the State, in the charter or in the grant itself. We do not desire, if we could, to controvert this proposition, for all the conditions manifestly exist in favor of the plaintiff in the present case.

It is pertinent to remark, however, that most of the authorities cited in Cooley on Taxation, and those in the opinion in this case, are simply and only to confirm the above well established principle, and have required no comment or further reference.

But it is said that the charter of 1816 made no exemption from taxation, and that the act of 1855, having been passed long subsequent to the charter (1816) and subsequent to the purchase of the property, could form no basis of a contract.

It is covered by act 245 of 1850, quoted in the brief of counsel for the city, p. 6 ; nor was that act passed upon by this Court in the Bertel case, 34 A. 574, nor was the plaintiff corporation in that case incorporated until 1870, twenty years later, whereas, the Grand Lodge was then (1850) a corporation under the act of 1816.

But this question is not an open one in this Court.

In the case of New Orleans Female Orphan Asylum vs. Houston, 37 A. 68, this Court said :

"The principal contention of the defendant is that the property alleged to be exempt from taxation consists of stores which are rented for income and are not actually used for an orphan asylum.

"With the exception of a difference in dates, the facts and circumstances in this case are absolutely identical with the points discussed and disposed of in the case of the City of New Orleans vs. Poydras Asylum, 33 A. 851. *As was the case with the Poydras, the charter of this asylum is silent on the subject of exemption from taxation ; and like the former its exemption resulted from subsequent legislation*, and as was the case with the Poydras Asylum, the property sought herein to be exempted is not the building actually used or occupied as an asylum, but consists of other property which is rented, and the revenue of which is used exclusively for the maintenance of the asylum, and for the support of its inmates."

Mr. Justice Fenner, in his concurring opinion, says :

"It would be a scandalous commentary upon the uncertainty of even the organic law and the vacillation of Courts, if, as regards two orphan asylums, having precisely the same right, we should grant exception to one and refuse it to another."

37 A. 70.

And the dissenting opinion of Mr. Justice Manning was based on the fact that, "the exemption was by legislative act after the incorporation of the plaintiff asylum," and closing, he says :

"I recognize, however, the injustice that would be done by subjecting the plaintiff *and other charitable institutions*, in consimili casu, *to the payment of taxes, while the Poydras Asylum has been decreed exempt, and I shall in future adopt the ruling in that case as final.*"

Orphan Asylum vs. Tax Collector, 37 A. 70.

For the convenience of the Court and counsel, we have made a full extract from the opinion in the above case, and for the same reasons, freely extract from the decision in Poydras Asylum case, 33 A. 850.

The Chief Justice, as the organ of the Court, says :

"The defendant corporation was created by a special act of February 22d, 1817. All the property, real and personal, belonging to a similar institution, the Orphan Boys' Asylum of New Orleans, was, by act of March 12th, 1836 (Acts, page 135), exempted from *all* taxation, State, parish or city, in which situated. This exemption was by act of March 25th, 1844 (Acts, page 64, No. 96), specially extended to the Female Orphan Asylum, and to all other orphan asylums in the State, and to the House of Refuge for the Reformation of Juvenile Delinquents, which thereby were exempted from *all* parish, *municipal* and State taxation, *any law to the contrary notwithstanding.* By act of March 21st, 1850, the property of this asylum, as well as that of all other charitable institutions, was exempted from any taxation by the city of New Orleans, or the several municipalities thereof.

"The judicial annals of this Court show what construction was placed by our predecessors upon these different exemption laws," and he then refers to and quotes from 9 A. 584 (a suit vs. same Corporation), and then says:

"Acting on the faith of the immunities thus extended and thereby accepting the same, the defendant corporation assumed to build, in 1858, a large and costly asylum in the sixth district of this city, to which it moved its orphans in that year, and which it has since continued to occupy to the present day."

The point made against us is, that the grant of exemption is not in the charter, nor an amendment thereto, and the Court says "the authorities are unanimous" on this point.

We have but to refer the Court to the case of the New Orleans Female Orphan Asylum vs. J. D. Houston, State tax collector, 37 A. 68, the last expression of judicial wisdom by this Court on that point (1885), affirming the opinion in City of New Orleans vs. Poydras Orphan Asylum, 33 A. 850, as at least seemingly conclusive that the Court has fallen into error in that conclusion.

In support of this, in addition to the summary of the Chief Justice, in Poydras asylum case, we give a summary of the legislative acts in relation to these corporations, which are pertinent to the question under consideration.

1. The Grand Lodge was incorporated as an eleemosynary institution, 18th March, 1816. P. 98.

2. The Poydras Asylum was created by a special act, 22d February, 1817. P. 192.

3. The New Orleans Female Orphan Asylum by special act, 5th April, 1843. P. 90.

In none of the charters, nor in formal amendments thereto, was the property of these societies exempted from taxation.

They all three claim exemption under special acts; each a bare act of exemption.

(*a*) The act under which the Poydras Asylum claimed exemption is in the following words: (we quote the entire act:)

"That from and after the passage of this act, all the property, real and personal, belonging to the Orphan Boys' Asylum of New Orleans, be and the same is hereby exempted from all taxation, either by the State, parish or city in which it is situated, any law to the contrary notwithstanding. Approved, March 12, 1836." Acts of 1836, p. 135.

The property of the Asylum was declared exempt in 33 A. 850.

(*b*) The act of exemption of the Female Orphan Society is as follows: (we quote the whole act:)

"That the exemption from taxation passed in favor of the Orphan Boys' Asylum of New Orleans, by act approved 12th March, 1836, be extended to the Female Orphan Society, and to all other orphan asylums in the State, and to the House of Refuge for the Reformation of Juvenile Delinquents, and that they be exempted from parish and municipal, as well as State taxation, any law to the contrary notwithstanding.

"Approved March 25th, 1844. Act 96 of 1844." P. 64.

The property of this asylum was declared exempt under that act. 37 A. 68.

(*c*) The act for the relief of the Grand Lodge is in the following words: (we again quote the whole act:)

"That the building situated at the corner of St. Charles and Perdido streets, in the city of New Orleans, and known as the Grand Lodge Hall of F. and A. Masons of the State of Louisiana, shall be exempt from State and parish taxation, so long as it is occupied as the Grand Lodge of the F. and A. Masons."

Approved 15th March, 1855. Act No. 225, p. 271.

We submit that the exemption claimed by the two orphan asylums and allowed—that of the Poydras Boys' Asylum, 33 A. 850, and that of the Female Orphan Asylum, 37 A. 68—were

upon as bald grants as that under which the Grand Lodge claims exemption. All these were "bare statutory exemptions, *not* contained in the legislative charter, * * * nor in an amendment thereto."

All three institutions were chartered long before the exemptions—one, the present plaintiff, in 1816, the Poydras Asylum in 1817, and the other in 1843, while the exemptions, by a *bare statute*, were in 1836, 1844 and 1855, as shown above.

With all due respect, we submit to the consideration of the Court, in the words of Mr. Justice Manning, that "the injustice that would be done by subjecting the plaintiff *and other charitable institutions* in *consimili casu* to the payment of taxes, while the Poydras Asylum has been decreed exempt," and in the words of Mr. Justice Fenner, that "it would be a scandalous commentary upon the uncertainty of even the organic law and the vacillation of courts, if, as regards two orphan asylums, having precisely the same right, we should grant exemption to one and refuse it to another." (Orphan Asylum vs. Tax Collector, 37 A. 70) as absolutely conclusive to the matter in controversy in the instant case.

II.

It is held as a rule of law that there must have been a consideration for the relinquishment of the power of taxation, or the elements of a contract will be wanting. But in cases of the exemption of the property of charitable institutions, it has been held that "*there is no necessity for looking for the consideration for a legislative contract outside of the objects for which the corporation was created. These objects were decreed by the legislature to be beneficial to the community, and this benefit constitutes the consideration of the contract and no other is required to support it.*"

Home of the Friendless vs. Rouse, 8 Wall. 437.

In that case, the Court said: "The purposes to be obtained by such a charity are usually beyond the ability of individual effort, and require an association of persons who will themselves contribute pecuniary aid, and are willing to become solicitors for the contributions of others. Usually the initiation of such an enterprise is in the hands of a few persons who need to be clothed with more than ordinary powers in order to obtain the

successful co-operation of others. *In no way could this co-operation be better secured than by conferring on the corporators the authority to say to the people of St. Louis, that their donations in money or lands, for the relief of the suffering female poor of the city, would be held by the institution undiminished by taxation*"—*p. 436.*

Again: "It was doubtless under the influence of these considerations, and because every government wishes to encourage benevolent enterprises, that the legislature granted the charter" * * * and enacted "that the property of the corporation shall be exempt from taxation."

* * * * * * * *

"It is objected that there is no consideration stated in the act for the relief from taxation, which, it is claimed, is necessary in order to uphold the contract. But this is a mistaken view of the law on this subject."

Ibid, 436.

And, again, the Court said: "It is settled by the repeated adjudications of this Court, that a State may, by contract based on a consideration, exempt the property of an individual or corporation from taxation, either for a specified period or permanently. *And it is equally well settled that the exemption is presumed to be on sufficient consideration, and binds the State if the charter containing it is accepted.*"

Ibid, 438.

It is worthy of remark that neither in this case, nor in that of *Asylum vs. New Orleans*, 105 U. S. 362, is the case in 24 Howard, 300, referred to by the Court as authority; nor, we may add, has it, since its rendition, been so referred to in any case of a similar kind.

The latter case, that of *Asylum vs. New Orleans*, was under the constitution of 1868, which required that all property should be taxed, but gave power to the general assembly "to exempt from taxation property actually used for church, school or charitable purposes." This power of exemption was held repeatedly by this Court not to cover property "when leased or used for corporate income."

15 A. 390.

27 A. 836.

28 A. 512.

31 A. 292.

See also dissenting opinion of Judge Manning, 37 A. 70.

In that case, the Court said: "But the property in question is not obnoxious to this objection; it directly contributes to the support of the institution, and is held for that purpose alone."

Asylum vs. New Orleans, 105 U. S. 366.

And in the examination of authorities on page 368, no reference is made to 24 How. 300.

It is further worthy of remark that the counsel for the defendant, in Home of the Friendless vs. Rouse, cited 24 Howard, 300; 12 Mass. 443; and 35 N. Y. 629, with others, as sustaining his position, but which Mr. Justice Davis, in the opinion of the Court, ignored, or controverted by the citation of other authorities found in note at foot of page 438—the whole tending to show a relaxation of the rule which it is contended, is established in 24 Howard, 300.

But aside from the presumption that the exemption is *presumed* "to be on sufficient consideration, and binds the State," (8 Wall. 438), the record contains full proof of the consideration for the exemption granted by act 225 of 1855, when considered in the light of the decision cited above.

The Grand Lodge, an eleemosynary institution, purchased in 1853, the property sought to be taxed, at the corner of St. Charles and Perdido streets, in the city of New Orleans, under a resolution of the Grand Lodge, then in session. In the act of purchase (Rec. p. 10), is incorporated the following paragraph:

"And it is hereby declared by the said grand master, that at the meeting of the said Grand Lodge hereinbefore referred to, a resolution was adopted, which he was directed to cause to be incorporated in the present deed of conveyance, which resolution (as will appear by reference to a certified copy thereof, hereto annexed), is in the following words:

Be it resolved, "*That in order to fully satisfy the minds of our brethren and those who may be disposed to give their aid to the purchase of the Grand Lodge Hall*, this Grand Lodge does now solemnly declare and proclaim that said purchase is to be made for the purpose and object of creating a fund for charitable purposes, in the relief of worthy distressed members of the order, their wives, children and families. And this Grand Lodge solemnly

pledges itself that so soon as the said property shall be paid for the whole of the revenue which may be derived from it, after deducting necessary and unavoidable expenses on its account, shall be devoted to those objects. And it further pledges itself, that should it ever be expedient to sell said property, the proceeds thereof shall be invested as a permanent charity fund, and the revenues thereof applied in the same manner."

"And the Grand Master is hereby directed to incorporate this resolution in the deed of sale of said property, as the *solemn pledge and contract* of this Grand Lodge *with those who have contributed or may hereafter contribute to the purchase thereof*."

The purchase was consummated on 4th February, 1853, for "the price and sum of $55,000, in part payment and deduction of which the said corporation has * * * paid the sum of $10,000 in lawful current money * * * and for the balance (to-wit, the sum of $45,000), has furnished three * * * notes, all dated the 1st February, 1853, two, each for $15,000, in one and two years after date, with six per cent. interest, and one of $15,000, in three years after date, with seven per cent. interest, secured by mortgage, etc." Record, pp. 8 and 9.

The oral testimony shows that "many thousand dollars, in excess of the usual dues and fees, have been contributed by the members of the order in this State (and elsewhere) to the charitable fund. All the receipts of the Grand Lodge since 1853, in excess of its necessary expenses, amounting to several thousand dollars, and many thousand dollars in the shape of special annual taxes and voluntary contributions, have been added to this fund and used in the payment of the purchase price of the property, corner of St. Charles and Perdido streets, that as soon as paid for, its revenues could be made available for the charities of the order, and as was contemplated and expressed in the act of purchase."

Page 2, Sup. Record.

It was under this state of facts; the *meritorious and eleemosynary* character of the institution; the purchase of that property, the net revenues of which, as soon as paid for, were devoted forever to charitable purposes; the contributions then made and to be made, to pay the purchase price ($10,000 thus contributed at the time of purchase), and being contributed to pay off the large debt; the possibility of failure in future

contributions, unless aid from some source could be had; that the Legislature in March, 1855, passed Act 255, exempting the property from State and parish taxation "so long as it is occupied as a Grand Lodge."

The motive which induced the Legislature to grant this exemption is thus manifest, and the exemption was granted as an inducement to the further contributions to extinguish the then debt of $30,000 (or more) and interest, and, it is submitted, formed all the necessary elements of a contract with those who had and should thereafter contribute to the extinguishment of the debt.

III.

This Court quoted affirmatively from Sedgwick, Const., 19, what is the fundamental law that "the general rules of interpretation are the same whether applied to statutes or constitutions."

And from Cooley on Const. Lim. 63, that "we are aware of no reasons applicable to ordinary legislation, which do not apply equally well to constitutions."

And from Bishop on Statutory Crimes, §92, that the general doctrine is, that constitutions are to be expounded in the same way and according to the same rules as statutes.

New Orleans vs. Poydras Asylum, 33 A. 854.

Now, it is also a fundamental rule of interpretation, that "a *particular law*, still less a *special statute*, which is one requiring plea and proof, is not considered as repealed by a general law, unless expressly so, or conflicting to such an extent that they can not be reconciled and can not stand, co-existing, under any circumstances." 33 A. 854, and cases there cited.

The Court, continuing, says: "Further; legislation, constitutional or statutory, is usually intended to operate *prospectively*, and should be applied accordingly, unless it clearly results from terms used that it was designed to act retrospectively, and that, under the constitution, it could legitimately do so." Ibid. 854, and the citations of text and authorities on p. 855.

Indeed, we might quote the whole of the reasoning, in the opinion of the Chief Justice on this point, as the most forcibly expressed statement of the case possible to be made. The paraphrase therein of article 118 of the constitution of 1868 (on p. 859) can equally be made of article 207 of 1879.

There is the same provision (art. 155) in the constitution of 1879, against *retroactive* legislation, as there was in that of 1868. See also article 258 of constitution of 1879.

IV.

The case of the Rector of Christ Church vs. County of Philadelphia, 24 Howard, 300, involved only one contested question, namely: "Whether the reason given for exempting the property was a legal consideration of a contract, or only a motive alleged for passing the laws."

The first case decided by the Supreme Court of the United States, after that in 24 Howard (1860), was that in 8 Wallace, 430 (in 1870), in which the defense, adduced in their brief, among other cases, as authority, 24 Howard, 300, and 12 Mass. 443; all the others treating on the rule applicable between grants to public corporations, as distinguished from private corporations. In this case, Home of the Friendless, the Supreme Court take another view and cite numerous previous decisions of the Supreme Court, as showing the contrary doctrine "no longer opened for argument."

See the cases referred to in note, p. 438.

The next case is that of Tomlinson vs. Jessup, 15 Wallace, 454 (decided in 1873). Mr. Justice Field says: "There is no subject over which it is of greater moment for the State to preserve its power than that of taxation; it has nevertheless been held by this Court, not, however, without occasional earnest dissent from a minority, that the power of taxation over particular parcels of property, or of property of particular persons or corporations, may be surrendered by one legislative body so as to bind its successors and the State. It was so adjudged at an early date in New Jersey vs. Wilson (17 Cranch, 164); the adjudication was affirmed in Jefferson Bank vs. Skelly (1 Black, 428), and

has been repeated in several cases within the past few years, and notably so in the cases of the Home of the Friendless vs. Rouse (8 Wallace, 430); Wilmington Railroad vs. Reid (13 Wallace, 264). In these cases and in others of a similar character, the exemption is upheld as having been made upon consideration moving to the State, which gave to the transaction the character of a contract." P. 458.

The cases in 18, 20 and 21 Wallace are railroad tax cases, and contain nothing pertinent to the present contention.

The next case is that of Asylum vs. New Orleans, 105 U. S. 362, (decided in 1882). In this case is found the last expression of the Supreme Court of the United States on the question in controversy.

In commenting upon the opinion of the Supreme Court of Louisiana, Mr. Justice Bradley, as the organ of the Court, says:

"The argument of the Supreme Court (of Louisiana) would go to the extent of declaring that the abrogation of the contract, effected by the constitution of 1868, was valid as to all after-acquired property, whether indemnity was provided or not; and this amounts to saying that the legislature or people of Louisiana had absolute power to pass a law impairing the obligation of the contract, without any condition or qualification whatsoever.

"We can not concur in this view. We think the power of abrogation, or alteration, was qualified by the duty of providing indemnity to the full extent of the damage or burden caused by such change. This conclusion seems to us so obvious as to require no extended argument in its support."

"This opinion might be extended by an examination of authorities. We might refer to Home of the Friendless vs. Rouse (8 Wall. 430), which is almost on all fours with the present case. We might go back to the case of Dartmouth College vs. Woodward and the cases since decided, and review all the reasons on which they were grounded; we might dilate on the legislative reasons for granting immunity from taxes to such charitable institutions as that of the plaintiff in error, *prominent among which would doubtless be the fact that the support and maintenance extended to the objects of the charity relieves the State from a burden which would involve a much larger amount of taxation than that which it waives by granting the exemption.* But such a review would be but a repetition of what has been said before, and much of it would be out of place." P. 368.

And further on the Court said:

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And further on the Court said:

"We are well aware of the forcible language which has been used in previous cases in reference to the importance to the State of the governmental function of taxation: the caution that ought to be exercised in maintaining a claimed exemption from taxes; the clearness and certainty which the grant should exhibit. We concur in all that has been said by this Court and many State Courts on the subject. *But where the language is clear, and the intention to grant the exemption apparent, the Court has never hesitated to give it force and effect; and as before said, we think it difficult to conceive a grant more clearly expressed than that in the present case; and unless we are disposed to reverse the previous decisions of this Court, we can not hesitate what judgment we ought to give.*" P. 369.

We have quoted thus extensively from this case, because it is a case from this Court, one "at all-fours" with the instant case, and which passes over, without comment and in silence, the case in 24 Howard, 300, as not pertinent, or as having been at least construed as not settling any provision of law applicable to it.

But it is submitted that the reasoning of Mr. Justice Campbell, in the case in 24 Howard, hardly bears out the construction given to it by this Court. Passing over the absolute *silence* of the Supreme Court of the United States on this case, and as regarding it by such silence as not applicable to any case before it, or as determining any principle of law, let us for a moment examine the text of the opinion itself.

After stating the case, quoting the preamble to the act of exemption, giving the reasons which induced the Legislature thereto, and citing the repealing clause of 1851, Mr. Justice Campbell says:

"The inducements that moved the Legislature to concede the favor contained in the act of 1833 are SPECIAL, *and were probably* TEMPORARY *in their operation.* The usefulness of the corporation had been curtailed in consequence of the decay of their buildings and the burden of their taxes.

"It may be supposed that in eighteen years the buildings would be renovated, and that the corporation would be able afterwards to sustain some share of the taxation of the State."
24 Howard, 303.

In the case of Christ Church, etc., the inducement was:

"That in consequence of the decay of the buildings of the Hospital estate, and the increasing burden of taxes, its means are curtailed and its usefulness limited."

In the instant case, the purchase of the property for a permanent charity fund, the purchase price still to a large extent unpaid, and the failure of subscriptions to secure the money to pay the unpaid portion of the price, was the inducement to the passage of the act 225 of 1855, by which the Legislature said *to all who had and all who should thereafter contribute*, "if you will contribute to this fund to its entire extinguishment, your contributions shall remain untaxed as long as the property is occupied by the Grand Lodge." Under this pledge of the State, many thousand dollars have been contributed and the debt paid, and the fund permanently established.

V.

To show to this Honorable Court that the plaintiff is a corporation, the nature and objects of which entitle it to be regarded as purely charitable, it may not be improper to add, in amplification, the recognition of this fact in the charter itself, and in the Constitution and Regulations of the Body, on file as evidence, that the Masonic Order, forming the corporation, is, purely and broadly, a universally charitable one, in the seuse in which religion itself is so. That is to say, the Masonic body partakes of none of the elements of a business corporation in any sense of the word. It may not in this respect do as much actual good as those corporations or associations that promise regular benefices or benefits, combined with the life insurance or endowment plan, and in other ways contain features which accomplish practical good.

Masonry simply teaches charity as a principle, and exacts it as a moral duty. No member of the Order under the Grand Lodge constitution or regulations has any *contract* or *legal* right to relief. His condition addresses itself purely to the sense of

moral obligation, and that obligation is never ignored where means to respond to it are at hand, as is fully shown in the testimony in this regard. Hence, the dedication in the act of purchase of the property, and the consecration of that dedication in the written law and constitution of the corporation plaintiff, are but a response and exemplification of the principles of charity and benevolence taught and practiced under the sanction and auspices of the Grand Lodge.

Nor is the charity of the order confined to its members: primarily, it is true, the obligations towards members of the fraternity and their families have a first claim to recognition; destitute members, their widows and their orphans are to be provided for; but this duty is not a contract obligation resting upon a *quid pro quo*, but purely the exercise of charity springing voluntarily from the natural impulses suggested by the distress.

The charities are not confined to members of the Order, but as shown in the evidence, in cases of great calamity, are extended wherever want is to be relieved or distress ameliorated.

This seemingly extrinsic rhapsody is not submitted to your Honors for the purpose of displaying the nature and objects of the Masonic bodies, but merely to impress the suggestion that the objects of the corporation, plaintiff, are *purely, exclusively* and *unconditionally* charitable.

No member or person can possibly derive any benefit, except to be relieved when in want or distress and the relief is awarded, not under law or fixed rule, but adjusted by the degree of need on the one hand, and the means of the donor on the other.

The charity, therefore, which the "Grand Lodge," plaintiff, teaches and practices does not spring from any obligation assumed in its charter, but from the nature and objects of Masonry itself. This is simply *recognized* in the charter of 1816, and existed as a fact in 1855, and will continue to exist as a fact until Freemasonry itself shall cease to exist.

It is *permanent* or it *is* not at all. This undoubtedly the legislature recognized when it granted the exemption in the act of 1855. It granted exemption of the particular property, not because the "Grand Lodge of F. and A. Masons" occupied it, but because of the purposes and objects which the building and its use fostered, permanent and unconditional charity, of the nature of that which religion and the state recognize as a duty to the suffering and distressed and founded upon no other obligation. It is easy to see how this effects a permanent and continuous consideration on the part of the State for the exemption, when considered in combination with the conditions recited in the act of sale and embodied in the constitution of the Grand Lodge, of which the legislature may, as a legal proposition, be assumed to have been cognizant and its action based upon the combined effect of the recognition of the character of the corporation as a "charitable one in its charter, and the special pledge that the revenues derived shall be forever dedicated to that charity, the elements of an exemption based upon a consideration amounting to a contract are complete and the grant by the State should not be violated or withdrawn so long as the conditions upon which it was accorded are faithfully observed.

Most respectfully submitted,

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